

NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND  
MAY NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE RULES.  
See Ariz. R. Supreme Court 111(c); ARCAP 28(c); Ariz. R. Crim. P. 31.24

FILED BY CLERK

JUL 16 2010

COURT OF APPEALS  
DIVISION TWO

IN THE COURT OF APPEALS  
STATE OF ARIZONA  
DIVISION TWO

THE STATE OF ARIZONA,	)	2 CA-CR 2010-0111-PR
	)	DEPARTMENT B
Respondent,	)	
	)	<u>MEMORANDUM DECISION</u>
v.	)	Not for Publication
	)	Rule 111, Rules of
HENRY CONGRESS,	)	the Supreme Court
	)	
Petitioner.	)	
_____	)	

PETITION FOR REVIEW FROM THE SUPERIOR COURT OF PIMA COUNTY

Cause No. CR20074038

Honorable Howard Fell, Judge Pro Tempore

REVIEW GRANTED; RELIEF DENIED

Barbara LaWall, Pima County Attorney  
By Jacob R. Lines

Tucson  
Attorneys for Respondent

The Hopkins Law Office, P.C.  
By Cedric Martin Hopkins

Tucson  
Attorneys for Petitioner

V Á S Q U E Z, Presiding Judge.

¶1 After a jury trial, petitioner Henry Congress was convicted of aggravated driving under the influence of an intoxicant (DUI) and aggravated driving with an alcohol

concentration (AC) of .08 or more, both while his driver's license was suspended, revoked or restricted, and fleeing from law enforcement. This court affirmed the convictions and sentences on appeal, rejecting his contention that the trial court had erred by denying his motion for a judgment of acquittal on the DUI-related charges. *See State v. Congress*, No. 2 CA-CR 2008-0254 (memorandum decision filed Apr. 21, 2009). Congress filed a notice of post-conviction relief pursuant to Rule 32, Ariz. R. Crim. P., followed by a petition in which he argued trial and appellate counsel had been ineffective in failing to challenge the constitutionality of the seizure of a sample of his blood pursuant to a warrant. He contended the amount of force officers had used to restrain him and obtain the blood sample violated principles articulated in *Schmerber v. California*, 384 U.S. 757 (1966). The trial court denied the petition without an evidentiary hearing, and this petition for review followed. Absent a clear abuse of discretion, we will not disturb the trial court's ruling. *State v. Swoopes*, 216 Ariz. 390, ¶ 4, 166 P.3d 945, 948 (App. 2007).

¶2 In a thorough, well-reasoned minute entry, the trial court identified Congress's claims of ineffective assistance of trial and appellate counsel, citing, analyzing, and applying the relevant law to the facts of this case, including, inter alia, *Schmerber* and this court's decisions in *State v. May*, 210 Ariz. 452, 112 P.3d 39 (App. 2005), *State v. Estrada*, 209 Ariz. 287, 100 P.3d 452 (App. 2004), and *State v. Clary*, 196 Ariz. 610, 2 P.3d 1255 (App. 2000). Congress has not persuaded us on review that the court abused its discretion in finding he had failed to raise a colorable claim and denying the petition without an evidentiary hearing. Finding no purpose would be served in

reiterating the court's ruling here, we adopt it instead, *see State v. Whipple*, 177 Ariz. 272, 274, 866 P.2d 1358, 1360 (App. 1993), granting the petition for review but denying relief.

/s/ Garye L. Vásquez  
GARYE L. VÁSQUEZ, Presiding Judge

CONCURRING:

/s/ Peter J. Eckerstrom  
PETER J. ECKERSTROM, Judge

/s/ Virginia C. Kelly  
VIRGINIA C. KELLY, Judge